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METHOD OF DETERMINING RESPONSIBILITY FOR "UNCOMPLETED CARS" IN CHINA'S RR SHIPPING

Shao Tzu-fen

The Ministry of Railways is promoting the execution of transport agreements in order that both railways and shippers may derive greater benefits from transportation planning. Among other points, the agreements deal with the number of empty freight cars mutually agreed on to be supplied each month by the railway to the shipper. This number of cars is thereafter referred to as the planned number of cars. This monthly number is broken down into the daily number to be supplied, with the shipper having the privilege and obligation of indicating the number requested each day.

The responsibility of the railway to supply the planned number of cars is accompanied by the responsibility on the part of the shipper to load the empty cars promptly as they are supplied to him. The agreements also provide for a "marginal coefficient" of 20 percent above or below the planned number of cars. To illustrate, suppose the planned number averages 10 cars per day; the upper limit would then be 12 cars and the lower limit 8 cars. A number within the marginal limits would be between 8 and 12.

In practice, it frequently happens that the railway fails to supply the expected number of cars on certain days and thus disappoints the shipper; and more frequently, perhaps, that the shipper fails to load promptly the full number of cars supplied, thus disarranging the railway's train arrangements and wasting the capacity of the idle cars. The term "uncompleted cars" is applied to such cars, whether it is the railway that fails to complete the number to be supplied, or the shipper that fails to complete the number to be loaded. A penalty is imposed on uncompleted cars; but it is not a simple matter to determine where to draw the line of responsibility between the two parties.

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It is desirable that this question, as to how to assess fairly the responsibility, be lifted from the plane of vague moral responsibility which is beset by vexing disputes, to an unambiguous plane of legal responsibility, and that a fair method of determining the responsibility for uncompleted cars be incorporated in the transport agreements. To facilitate an understanding of the problem and the search for a solution, let us assume the particulars of a typical case as follows.

1. The parties to the agreement are the Peiping Branch of the China Department Store Company, and the Peiping Railway Subbureau.

2. In the agreement, the planned number of cars for the month is the basic task to which both parties are committed. The average daily [planned] number of cars is the work target for the shipper to request and the railway to supply. When determining responsibility for uncompleted cars, the planned number of cars for the whole month and the total number of cars loaded are the standards of reference.

3. The number of cars planned for the month is 300, which would be an average of 10 cars per day as the planned number. In the light of the loading and unloading capacity of the railway and of the shipper, the marginal coefficient of 20 percent is mutually decided on and made a part of the agreement. This means that neither party may exceed 12 or fall below 8 cars per day.

4. If it is found that the full number of planned cars has not been supplied by the railway or that the shipper has failed to load those that have been supplied, a penalty is imposed to indemnify the opposite party for breach of the agreement. For illustration, assume the same figures as mentioned in the preceding paragraph. Table 1 (below) indicates other figures for each day in five columns, where Column A is the day of the month, Column B is the daily average planned number of cars, Column C is the number of cars requested for each day by the shipper, Column D is the number of cars supplied each day by the railway, and Column E is the number of cars loaded each day by the shipper.

Table 1

A	B	C	D	E	A	B	C	D	E
1	10	12	8	8	17	10	10	10	10
2	10	12	6	6	18	10	10	10	9
3	10	12	7	7	19	10	10	10	10
4	10	12	10	9	20	10	10	10	7
5	10	12	8	7	21	10	9	12	8
6	10	12	6	5	22	10	9	12	7
7	10	12	6	6	23	10	9	12	9
8	10	12	7	7	24	10	9	12	8
9	10	12	6	6	25	10	9	12	10
10	10	12	7	7	26	10	9	12	6
11	10	10	10	8	27	10	9	12	4
12	10	10	10	9	28	10	9	12	3
13	10	10	10	9	29	10	9	12	12
14	10	10	10	9	30	10	9	12	5
15	10	10	10	8					
16	10	10	10	9	Total	300	310	291	228

Having these figures as to performance, there are three ways in which to calculate the number of uncompleted cars for which either party is responsible.

1. The planned number, shown in Column B, is taken as the standard of reference, with which the number of cars supplied and the number of cars loaded are compared, without referring to the number of cars requested, or to the marginal coefficient. The number of cars which the railway fails to supply should be computed for each day, and the number which the shipper fails to load should be computed for each day, to ascertain the responsibility of each party. These figures are shown in Table 2 (below), in which Column A is the day of the month, Column F is the number of cars below norm for which the railway is responsible (compare Column D with Column B in Table 1), and Column G is the number of cars below norm for which the shipper is responsible (compare Column E with Column B in Table 1).

Table 2

A	F	G	A	F	G
1	2		17		
2	4		18		1
3	3		19		
4		1	20		3
5	2	1	21		2
6	4	1	22		3
7	4		23		1
8	3		24		2
9	4		25		
10	3		26		4
11		2	27		6
12		1	28		7
13		1	29		
14		1	30		5
15		2			
16		1	Total	27	45

Table 2 shows that the railway was responsible for 27 cars and the shipper for 45 cars; together, these amount to 72 cars. But the railway, without falling below the lower marginal limit, supplied 291 cars, i.e., only 9 cars short of the planned number. On the other hand, of the 291 cars supplied, the shipper loaded only 228 cars. The difference between 291 and 228 is 63 cars, whereas Table 2 indicates the shipper's responsibility for only 45 cars. There seems to be something unfair in this method of computation.

2. The number of cars requested, as shown in Column C of Table 1, is taken as the standard of reference, and Column D and Column E are compared with Column C. When this is done, the number of uncompleted cars for which each party is responsible is shown in Table 3 (below), in which Column A is the day of the month, and Colums F and G show the number of uncompleted cars of the railway and shipper respectively, when compared with the number of cars requested as shown in Column C of Table 1.

Table 3

A	F	G	A	F	G
1	- 4		17		
2	- 6		18		- 1
3	- 5		19		
4	- 2	- 1	20		- 3
5	- 4	- 1	21	- 3	- 1
6	- 6	- 1	22	- 3	- 2
7	- 6		23	- 3	
8	- 5		24	- 3	- 1
9	- 6		25	- 3	- 1
10	- 5		26	- 3	- 3
11		- 2	27	- 3	- 5
12		- 1	28	- 3	- 6
13		- 1	29	- 3	- 3
14		- 1	30	- 3	- 4
15		- 2			
16		- 1	Total	-19	-33

From the totals, it is seen that the railway is responsible for 19 cars and the shipper for 33 cars. These two figures total 52 cars; but the actual number of uncompleted cars, as seen from Table 2, was 72 cars, and not 52 cars.

3. The marginal limits are taken as the standard of reference. If the railway supplies not more than 12 cars nor less than 8 cars a day, and if the shipper loads not less than 8 cars per day, then neither party is responsible for any uncompleted cars. The figures in Table 4, based on Table 1, show the number of uncompleted cars on this third basis of comparison.

Table 4

A	F	G	A	F	G
1			17		
2	2		18		
3	1		19		
4			20		1
5		1	21		
6	2	1	22		1
7	2		23		
8	1		24		
9	2		25		
10	1		26		2
11			27		4
12			28		5
13			29		
14			30		3
15					
16			Total	11	18

From Table 4 it appears that the railway is responsible for 11 cars and the shipper for 18 cars. Combined, these total 29 uncompleted cars, which also does not agree with the actual number, which is 72 cars.

It is plain that none of the three methods yields figures that correspond to the actual number of uncompleted cars, and hence cannot be used. Consequently, the writer offers two formulas, that accord with the transport agreement, by which the extent of responsibility of either party may be easily computed. These formulas are as follows:

1. The number of uncompleted cars for which the railway is responsible (X), is equal to the difference between the number of cars requested (C) and the number supplied (D), minus the number which the railway could not supply for reasons beyond its control (N). That is: $X = (C - D) - N$.

2. The number of uncompleted cars for which the shipper is responsible (Y), is equal to the difference between the planned normal number (B) and the number requested (C), plus the difference between the number of cars supplied (D) and the number of cars loaded (E), provided the latter is not greater than the planned number, minus the number of cars uncompleted for reasons beyond the shipper's control (Q). That is: $Y = (B-C) - (D-E) - Q$.

Substituting the actual numbers from Table 1 and Table 2, we have:

$$X = 300 - 291 - 0 = 9$$

$$Y = (300 - 300) - (291-228) - 0 = 63$$

Having ascertained these figures, it is clear that the shipper should be responsible for indemnifying the railway for the difference between these two figures, Y and X, which is $63 - 9 = 54$ cars, [multiplied by the prescribed penalty for each uncompleted car].

The following comments are offered on some of the points in the problem under consideration. Uncompleted cars, according to the terms of the transport agreement, are attributable to one or more of the following causes: (a) the shipper did not request enough cars, as when the planned number of cars was 300 but the shipper requested 200, which was 100 too few; (b) the railway did not supply enough cars, as when the shipper requested 200 cars and the railway supplied only 150 cars, which was 50 cars too few; and (c) the number of cars loaded was too few, as when the railway supplied 150 cars, a number not in excess of the planned number, and the shipper loaded only 100 cars, which was 50 too few. When the number of cars supplied is too few, it is the railway's responsibility; if too few cars are requested or too few are loaded, it is the shipper's responsibility.

Sometimes it may happen that the supply of cars, the request for cars, or the loading of cars may be too small, for extraneous reasons, in which circumstances the railway should not be held responsible on the one hand, or the shipper on the other. (This point should be specifically safeguarded in the terms of the transport agreement.) Any cars uncompleted for such reasons should be deducted. Examples would be the railway's inability to supply the planned or requested number of cars on one or more days, or for the month as a whole, because of, let us say, a washout on the line; or the shipper's inability to load the cars supplied because of a government order dictated by unrelated considerations. These instances are examples of what are meant as causes outside the railway's or the shipper's control.

One point is to be noted in connection with these formulas: In any case where the monthly aggregate of the number of cars supplied exceeds the planned number, computations as to responsibility should be based on the latter figure, for according to the terms and spirit of the agreement the duty of either party does not go beyond the planned figures, and hence no responsibility is attached to the number of cars in excess of the planned number.

If the total number of cars requested by the shipper exceeds the planned number, it may be for either of two reasons: that the shipper is really desirous of loading more than the planned number, or that the shipper, knowing that the railway is rather short on cars, requests for every day the full number up to the upper marginal limit, hoping thereby to get at least the planned number.

When the number of cars supplied during a month exceeds the planned number, it may be for either of two reasons. One is that in the first part of the month the railway was unable to supply the usual number of cars, and so later in the month it supplied the maximum number permitted by the marginal coefficient, thus hoping to equal or surpass the planned figure for the month. The other is that the railway may wish to turn in a performance record which surpasses the planned figures.

Whatever may be the case, the duty or responsibility of either party does not extend beyond the planned figures, and no penalty should be imposed in connection with any cars in excess of the planned figures. Sometimes it occurs that a shipper has no cargo, or only insufficient cargo, to be shipped. Nevertheless, he requests the usual number in order not to fall below the lower marginal limit of the planned number. If these cars are supplied, and the shipper is unable to load them, they remain idle and their carrying capacity is wasted.

In the Soviet Union, there is a legal responsibility attached to such practices. They should be strictly prohibited, and that is why the responsibility for uncompleted cars must be computed and penalties imposed. Another reason for the penalties is that the system tends to keep the railway's planning more realistic and thus contributes to improvement in service and in performance.

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